

OCT - 4 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PARK, SOON KYUNG,
a.k.a. PIAO, CUN JING,

Defendant.

) CRIMINAL CASE NO. 03-00043

)
)
) **MOTION TO INCLUDE THREE PAGES**
) **OF PRE-SENTENCE INVESTIGATION**
) **REPORT IN EXCERPTS OF RECORD;**
) **CERTIFICATE OF SERVICE**

)
)
) Hearing: None requested

The Defendant, Dr. Park Soon Kyung,* moves for leave to include three pages of his Pre-Sentence Investigation Report (PSIR), in the Excerpts of Record for purposes of his appeal.

The 38-page PSIR was submitted 3 December 2005 and Defendant was sentenced on 6 January 2005. Clerk's Record ("CR") 48-1. The bottom of page two of the PSIR provides as follows:

* In Korean, the surname is given first. See The Bluebook: A Uniform System of Citation R. 10.2.1(g), at 84 (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (*i.e.*, classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is redisclosed by the Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

PSIR (D.N.M.I. submitted Dec. 3, 2004) (underscoring emphasis added).

The purpose of the PSIR being under seal and disclosure being subject to "consent of the sentencing judge" is to protect personal and private information about the defendant, victims, and witnesses, and to promote candor during the PSIR preparation process. In this case, the pages sought to be included in the Excerpts of Record are page one (cover page), and pages twenty-two and twenty-three (dealing with acceptance of responsibility). These particular pages do not implicate the concerns for which the entire PSIR is sealed, and ***notably, Defendant is not moving that those pages be unsealed.***

For the Court's information, set forth below is Ninth Circuit Rule 30-1.10 in its entirety.

30-1.10 Presentence Reports

In all cases in which the presentence report is referenced in the brief, the party filing such brief must forward four copies of the presentence report and may forward four (4) copies of any other relevant confidential sentencing documents under seal to the Clerk of the Court of Appeals. This filing shall be accomplished by mailing the four (4) copies of the presentence report in a sealed envelope which reflects the title and number of the cases and that four (4) copies of the presentence report are enclosed. The copies of the presentence report shall accompany the brief and excerpts of record. The presentence report shall remain under seal but be provided by the Clerk to the panel hearing the case.

9th Cir. R. 30-1.10 (effective July 1, 1997). Counsel will, of course, comply with this rule.

Nevertheless, allowing PSIR pages one, twenty-two, and twenty-three to be also included in the Excerpts of Record will permit ready reference by judges, clerks, and counsel, so that the Defendant's appellate brief will not need to include major wholesale quotation of the latter two pages in order to be understood. Viewing the entire PSIR, with all the privacy-based restrictions in doing so as set forth in

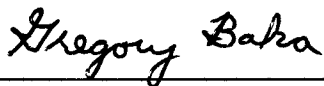
1 the PSIR itself, judicial policy, and the Ninth Circuit Rules, is not necessary to resolve Defendant's
2 "acceptance of responsibility" issues.

3 Hence, consent of the Court in allowing the limited inclusion of these pages in the Excerpts of
4 Record will promote effective assistance of counsel and judicial efficiency, while safeguarding the PSIR
5 process. Accordingly, Defendant requests that leave to include those three pages in his Excerpts of
6 Record be granted.

7 The undersigned has spoken telephonically with Assistant U.S. Attorney Timothy Moran, who
8 does not oppose this motion, and Defendant waives oral argument.

9 Respectfully submitted,

10
11 Dated: Tuesday, 4 October 2005.



GREGORY BAKA # F0199
Attorney for Defendant
PARK, SOON KYUNG

CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Criminal Procedure 1(a)(3)(B) and 49(b); and Federal Rules of Civil Procedure 5(b) & (d), the undersigned declarant states as follows:

1. I am eighteen years of age or older, and I certify that I caused to be served the following document(s) to the last known address(es) listed below on the date(s) indicated.

MOTION TO INCLUDE THREE PAGES OF PRE-SENTENCE INVESTIGATION REPORT IN EXCERPTS OF RECORD; CERTIFICATE OF SERVICE

2. As set forth below, this service was accomplished either by personal delivery, by U.S. Mail, or by leaving it with the Clerk of Court (in attorney's box), cf. Fed. R. Civ. P. 5(b)(2)(C), or by fax.

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3. I declare under penalty of perjury that the foregoing is true and correct. Executed on Tuesday, 4 October 2005.



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PARK, SOON KYUNG